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Regulating Marijuana in California

Technical Appendices

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TABLE A1

States with legal medical and/or recreational marijuana

| States with legalized medical use ^{1,2} | Population |
|--|--------------------|
| Alaska (1999) | 736,732 |
| Arizona (2010) | 6,731,484 |
| California (1996) | 38,802,500 |
| Colorado (2000) | 5,355,866 |
| Connecticut (2012) | 3,596,677 |
| Delaware (2011) | 935,614 |
| Hawaii (2000) | 1,419,561 |
| Illinois (2014) | 12,880,580 |
| Louisiana (2015) | 4,649,676 |
| Maine (1999) | 1,330,089 |
| Maryland (2014) | 5,976,407 |
| Massachusetts (2013) | 6,745,408 |
| Michigan (2008) | 9,909,877 |
| Minnesota (2014) | 5,457,173 |
| Montana (2004) | 1,023,579 |
| Nevada (2001) | 2,839,099 |
| New Hampshire (2013) | 1,326,813 |
| New Jersey (2010) | 8,938,175 |
| New Mexico (2007) | 2,085,572 |
| New York (2014) | 19,746,227 |
| Oregon (1999) | 3,970,239 |
| Rhode Island (2006) | 1,055,173 |
| Vermont (2004) | 626,562 |
| Washington (1998) | 7,061,530 |
| District of Columbia (2010) | 658,893 |
| Total population | 153,859,506 |
| Percent of US population | 48.3% |

| States with legalized recreational use ^{3,4} | Population |
|---|-------------------|
| Alaska (2015) | 736,732 |
| Colorado (2012) | 5,355,866 |
| Oregon (2015) | 3,970,239 |
| Washington (2012) | 7,061,530 |
| District of Columbia (2015) | 658,893 |
| Total population | 17,783,260 |
| Percent of US population | 5.6% |

| States that may legalize recreational use in 2016 ^{5,6,7} | Population |
|--|------------|
| Arizona (may appear on 2016 ballot) | 6,731,484 |
| California (may appear on 2016 ballot) | 38,802,500 |
| Maine (may appear on 2016 ballot) | 1,330,089 |

| | |
|---|--------------------|
| Massachusetts (may appear on 2016 ballot) | 6,745,408 |
| Michigan (may appear on 2016 ballot) | 9,909,877 |
| Montana (may appear on 2016 ballot) | 1,023,579 |
| Nevada (on 2016 Ballot) | 2,839,099 |
| New Mexico (may appear on 2016 ballot) | 2,085,572 |
| Arkansas (may appear on 2016 ballot) | 2,966,369 |
| Georgia (may appear on 2016 ballot) | 10,097,343 |
| Missouri (may appear on 2016 ballot) | 6,063,589 |
| Ohio (may appear on 2016 ballot) | 11,594,163 |
| Total population | 100,189,072 |
| Percent of US population | 31.4% |

Note 1: Dates show the year medical use laws took effect, not the year they were initially approved.

Note 2: Of the 24 states and DC with legalized medical use, 4 states and DC have legalized recreational use (AK, CO, OR, WA, & DC), 8 states may legalize recreational use by referendum during the 2016 general election (NV, AZ, CA, ME, MA, MI, MT, & NM), and 12 states are not currently considering legalizing recreational use (CT, DE, HI, IL, LA, MD, MN, NH, NJ, NY, RI, & VT).

Note 3: Dates show the year that recreational use laws took effect, not the year they were initially approved.

Note 4: All states with legal recreational use laws previously approved legal medical use. There was an average interval of 12.6 years from when medical use laws took effect to when recreational use laws took effect.

Note 5: It is not yet guaranteed that all of these states will have legal recreational use referendums on their general election ballots. It is also not expected that all of these states will approve legal recreational use.

Note 6: Of the 12 states that may legalize recreational use in 2015 or 2016, 8 previously legalized medical use (NV, AZ, CA, ME, MA, MI, MT, & NM) while 4 (AR, GA, MO, & OH) have not.

The authors would like to thank the National Alliance for Model State Drug Laws (www.namsdl.org) for its help in developing some of the data in this table.

Population figures were obtained from the US Census Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2014

| | |
|---|-------------|
| Total population of states that may have legalized recreational use after 2016 | 117,972,332 |
| Percent of US population | 37.0% |
| Total population of states that may have legalized medical or recreational use after 2016 | 184,580,970 |
| Percent of US population | 57.9% |

TABLE A.2

Recreational marijuana laws in four states and the District of Columbia

| | Alaska | Colorado | Oregon | Washington | District of Columbia |
|--|---|---|---|---|---|
| Age Restrictions | 21 and older | 21 and older | 21 and older | 21 and older | 21 and older |
| Resident Sales Limits | Per single transaction: 1 ounce; 16 ounces of solid-infused; 72 ounces of liquid infused; 7 grams of concentrates. | Up to 1 ounce. | Per day: 1 ounce; 16 ounces of solid infused products; 72 ounces of liquid infused products, 5 grams of concentrates; 4 immature plants; 10 seeds. | 1 ounce; 16 ounces of solid infused products; 72 ounces of liquid infused products; 7 grams of concentrates. | N/A: Sales remain illegal; may possess up to 2 ounces for personal use. |
| Penalties for Sales to Minors | The Marijuana Control Board may suspend or revoke licenses for any regulatory violations, including sales to minors. The Board may also assess penalties of up to three times the monetary gain from the violation. | Sales to minors are classified as 'License Violations Affecting Public Safety.' Penalties for such violations include license suspensions, a fine of up to \$100,000 in lieu of suspension, fines per individual violation, license revocations, or restrictions on the license, depending on circumstances of the violation. | Intentional sales (within 2-year window): first instance carries a 30-day suspension, second instance carries license cancellation. Unintentional sales (within 3-year window): first instance carries a \$1,650 fine or 10-day suspension; second instance a \$4,950 fine or 30-day suspension; third instance a 30-day suspension; fourth instance license cancellation. | First instance carries a \$2,500 fine or 10-day suspension; second (within 3-year window) a 30-day suspension; third (within 3-year window) may result in license cancellation. | N/A: Sales remain illegal. |
| Signage and Advertising | Heavily Restricted. Limit of three signs that identify the store name. No ads within 1,000 feet of any child-centered facility or substance abuse treatment facility, or on public property or college campuses. All media advertising must contain warnings on health risks, pregnancy risks, and keeping products out of reach of children. | Essentially Prohibited. Cannot utilize media or internet unless there is reliable evidence that no more than 30% of the audience is reasonably expected to be under 21 | Essentially Prohibited. Cannot utilize media or internet unless there is reliable evidence that no more than 30% of the audience is reasonably expected to be under 21. May not advertise through handbills posted or passed out in public areas. | Essentially Prohibited. Can identify retail store, but cannot be false or misleading, or promote consumption. | N/A: Sales remain illegal. |
| Sales at Alcohol Establishments | Prohibited | Prohibited | Prohibited if at the same physical location or address. | Prohibited. Retail outlets may only sell marijuana, marijuana concentrates, marijuana-infused products, and marijuana paraphernalia. | N/A: Sales remain illegal. |
| Public Consumption | Unlawful to open and consume in view of general public. | Unlawful to open and consume in view of general public. | Unlawful to sell or consume in view of general public. | Unlawful to open and consume in view of general public. | Unlawful to open and consume in view of general public. |

| | Alaska | Colorado | Oregon | Washington | District of Columbia |
|---------------------------------------|---|--|--|--|---|
| Product Warning Labels | Must include 5 specific warning statements. ¹ | Must include 6 specific warning statements. ² | Point of sale must have a pregnancy warning and poison prevention warning. | All useable marijuana and marijuana-infused products must include material that contains warning language outlined in Washington Administration Code 314-55-105. | N/A: Sales remain illegal. |
| Gifting | Up to 1 ounce and up to 6 immature plants to adults 21 and older. | Up to 1.0 ounce to adults 21 and older. | No specific regulations for personal gifting. Gifts from marijuana retailers must conform to sales limits. | Marijuana users cannot resell their product or give to a friend as a gift. Marijuana is only legal for self-use and personal consumption. | May gift up to 1 ounce to an adult 21 or older. |
| Drug Tourism | Sales limits make no distinction between residents and non-residents. | Sales limited to 0.25 ounces to non-residents. | Sales limits make no distinction between residents and non-residents. | Same age restrictions and sales limits as residents; must be consumed in Washington; cannot be consumed in public. | N/A: Sales remain illegal. |
| Home Grows for Personal Use | 6 plants with restrictions on the number of mature plants. | 6 plants with restrictions on the number of mature plants. | 4 plants. | Not permitted. | 6 plants with restrictions on the number of mature plants; no more than 12 plants in a single house or rental unit. |
| Caregiver Grows for Patient Care | Regulations do not address. | Regulations do not address. | Patients must confirm approval for caregivers to sell excess marijuana to licensed retailers. | Caregivers may form a cooperative and share responsibility for acquiring and supplying resources needed to produce and process marijuana only for the medical use of members. No more than four qualifying patients or designated providers may become members. Members must hold valid recognition cards. | |
| Workplace May Drug Test | Yes | Yes | Yes | Yes | Yes |
| Local Ordinances Restricting Sale/Use | Permitted | Permitted | Local governments may adopt "reasonable restrictions" but may not prohibit sales or use except by general election referendum. | Permitted | Congress can intervene. |

¹ (A) "Marijuana has intoxicating effects and may be habit forming." (B) "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under its influence." (C) "There may be health risks associated with consumption of marijuana." (D) "For use only by adults twenty-one and older. Keep out of the reach of children." (E) "Marijuana should not be used by women who are pregnant or breast feeding."

² (A) "There may be health risks associated with the consumption of this product." (B) "This product contains marijuana and its potency was tested with an allowable plus or minus 15% variance pursuant to 12-43.4-202(3)(a)(IV)(E), C.R.S." (C) "This product was produced without regulatory oversight for health, safety, or efficacy." (D) "The intoxicating effects of this product may be delayed by two or more hours." (E) "There may be additional health risks associated with the consumption of this product for women who are pregnant, breastfeeding, or planning on becoming pregnant." (F) "Do not drive a motor vehicle or operate heavy machinery while using marijuana."

Appendix B. The Evolution of Federal and California Marijuana Laws

The laws governing marijuana have changed at the state and federal levels over the past 100 years (see text box). Over the past 20 years, California has taken steps to either lessen or drop altogether state marijuana laws. Currently, the state does not prohibit the sale or possession of marijuana for medical use and there are no criminal penalties associated with the possession of small amounts of marijuana. In 2015, the Medical Marijuana Regulation and Safety Act (MMRSA) was signed into law. It moves California toward a regulated market for medical marijuana. And an initiative similar to the *Control, Regulate and Tax Adult Use of Marijuana Act (AUMA)* is likely to appear on the November 2016 ballot. Table B1 presents the provisions of these measures.

Timeline of U.S. and California Marijuana Law

1913–1915: California outlawed sale, cultivation, and possession of cannabis without prescription along with other narcotics.

1920s: Penalties for both sale and possession of marijuana hardened, punishable by fines and/or sentences ranging from ½ to 6 years for first-time offenses.

1937: U.S. Congress passes the Marihuana Tax Act effectively banning the possession and sale of marijuana with a prohibitive tax and potential imprisonment for evasion.

1970: U.S. Congress passes the Controlled Substances Act classifying marijuana as a Schedule I drug, the most restrictive categorization, with no accepted medical use.

1972, November: California voters reject Proposition 19, the California Marijuana Initiative, an attempt to decriminalize possession and cultivation for adults, by a 2–1 margin, 66.5% to 33.5%.

1972, December: State legislature passes the Drug Abuse Act (Chapter 2.5, California Penal Code 1000) giving judges the option of sending non-violent, first-time offenders to court-approved drug rehabilitation programs in lieu of conviction.

1975: California legislature passes SB 95, the Moscone Act, making possession of up to 1 ounce of marijuana for personal use a citable misdemeanor rather than a felony.

1996: California voters approve Proposition 215, the Compassionate Use Act (CUA) with 56% in favor, becoming the first state to legalize possession and cultivation of marijuana for medical use.

2000: Voters approve Proposition 36, the Substance Abuse and Crime Prevention Act, with 60% in favor, allowing first- and second-time non-violent marijuana possession offenders to be given a probationary sentence involving drug treatment programs rather than incarceration.

2010, September: Governor Schwarzenegger signs SB 1449, decriminalizing possession of up to 1 oz. to an infraction, punishable by a fine of \$100. Like traffic tickets, appearance in court no longer necessary

2010, Nov: Voters reject Proposition 19, the Regulate, Control, and Tax Cannabis Act, to legalize recreational use, with 46.5% in favor.

2014, November: Voters pass Proposition 47, the Reduced Penalties for Some Crimes initiative, with 59.6% in favor, reclassifying some drug crimes and low-level offenses from felonies to misdemeanors.

2015, October: Governor Brown signs the Medical Marijuana Regulation and Safety Act, a three-bill package (SB 643, AB 266, AB 243) establishing the Bureau of Medical Marijuana Regulation, a regulatory body with oversight of physician recommendations, tracking movement of medical marijuana through the supply and distribution chain, and local and state licensing for dispensaries.

TABLE B1

Proposed provisions of AUMA for November 2016 ballot

| | California Control, Regulate and Tax Adult Use of Marijuana Act |
|--|---|
| Age Restrictions | 21 and older. |
| Possession limits | Up to 1 ounce of cannabis or 1 ounce-equivalent of cannabis products in public or transport. Up to 16 ounces of lawfully obtained cannabis or equivalent product at personal residence. |
| Penalties for Sales to Minors | The knowing sale of cannabis or cannabis products to minors punishable as a felony or misdemeanor. Licensees will face specific violations still to be determined by the Office of Cannabis Regulation. |
| Signage and Advertising | Office of Cannabis Regulation to develop and implement restrictions on signage with aim of preventing attraction of minors. |
| Sales at Alcohol Establishments | Local control may restrict. |
| Public Consumption | Unlawful to consume in public. Local control over on-site consumption at licensed facilities. |
| Product Warning Labels | Office of Cannabis Regulation to establish packaging rules to ensure informed consumption; includes penalties for mislabeling California county in which cannabis was grown. |
| Gifting | Up to 1 ounce or 1 ounce-equivalent product to adults 21 and older. |
| Drug Tourism | Sales limits make no distinction between residents and nonresidents. |
| Home Grows for Personal Use | Area not to exceed 100 square feet. |
| Caregiver Grows for Patient Care | Allowed by new medical marijuana regulations. |
| Workplace May Drug Test | Yes for both public and private employers. |
| Local Ordinances Restricting Sale/Use | Permitted for recreational marijuana. |

Federal law classifies marijuana as a Schedule I substance, making its sale or possession illegal. The tension between state and federal law has thus far been addressed administratively through memoranda providing guidance to federal prosecutors, the states, and marijuana-businesses. For example, in 2009, President Obama’s Department of Justice issued guidance to US Attorneys in states that have enacted laws permitting the medical use of marijuana stating that prosecutors should not focus attention on individuals “whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana” (Ogden 2009). In a memorandum four years later, the Department of Justice issued further guidance stating that marijuana sales and possession cases were a low priority and that limited enforcement resources should be reserved for only the most significant cases (Cole 2013). This guidance identified eight areas where it was implied the federal government would step in should states laws and enforcement efforts not offer adequate protection. As long as states implemented robust regulatory systems that addressed the eight areas, the federal government would not devote resources to enforcing federal marijuana drug law.³

³ One of the eight guidelines is that states are to enact legalization systems that prevent the diversion of marijuana from a state where it is legal to states where it is not. A recent study by the Rocky Mountain High Intensity Drug Trafficking Areas program reports that Colorado is a source for marijuana in other parts of the country, providing evidence that Colorado’s regulatory system is not meeting federal standards. The study reports that between 2010 and 2014, the number of states receiving

The Obama Administration has issued further guidance to states clarifying how it intends to address state marijuana laws. The Departments of Justice and Treasury issued two memoranda pertaining to finance and banking on the same day in 2014 providing guidance to prosecutors about financial crimes under the federal Bank Secrecy Act (Cole 2014; FinCEN 2014). Together, the Justice and Treasury guidance sought to clarify how businesses offering financial services to marijuana businesses should comply with federal Bank Secrecy Act requirements.⁴ A third memorandum was released by the Internal Revenue Service that sought to provide penalty relief for marijuana businesses that are unable to deposit payroll taxes electronically in the Electronic Federal Tax Payment System. Because most banks do not allow marijuana-related businesses to have accounts, marijuana businesses are unable to file their payroll taxes with the IRS. Not depositing electronically can result in a 10 percent failure-to-deposit penalty. In interim guidance, the IRS is providing these and other businesses that can't get bank accounts with penalty relief (IRS 2015). The guidance, which expires in June 2016, instructs its employees about how to evaluate a claim of reasonable cause by an “unbanked” taxpayer unable to obtain a bank account so that they won't be assessed a penalty.⁵

In December 2015, Congress passed a budget bill that included a provision prohibiting federal agencies from interfering with 23 states—including California—as they implement medical marijuana laws (P.L. 113-235, Section 538). However, since federal appropriations are determined annually, the prohibition against using federal resources to interfere with state medical marijuana law must be renewed annually.⁶

marijuana mailed from Colorado increased from 10 to 38. See “The Legalization of Marijuana in Colorado: The Impact,” Rocky Mountain High Intensity Drug Trafficking Area, Volume 3, September 2015, page 124.

⁴ Treasury's guidance reiterates the enforcement priorities established by the Cole memo and notes that these same priorities will apply to its banking and money laundering enforcement. It instructs banks to do due diligence when considering customers and file a Suspicious Activity Report (SAR) on any business that derives income from marijuana. It creates a special SAR filing category, “Marijuana Limited,” for business that do not appear to “implicate one of the Cole memo priorities or violate state law.”

⁵ Equally confusing is the IRS accommodation of marijuana businesses in Colorado where it has provided a cash-counting machine in downtown Denver to take payments of taxes and penalties for all marijuana businesses in the state.

⁶ Section 542 of the Consolidated Appropriations Act of 2016 maintains the ban prohibiting federal agencies from interfering with state medical marijuana laws..

Appendix C. A Framework for Marijuana Regulation

This report identifies common elements that have emerged in other state regulatory efforts. Specific regulatory objectives are associated with each of these areas. This framework organizes discussion of regulatory alternatives and tradeoffs. Table C1 provides an expanded version of the framework.

TABLE C1
Regulating the marijuana market involves pursuit of multiple goals in different areas

| Regulatory area | Goals | Regulatory Examples |
|---------------------------------------|---|--|
| Cultivation | <ul style="list-style-type: none"> • Reduced criminalization • Elimination of illegal markets and criminality • Increased resident participation in marijuana industry • Quality control and standardization • Prevention of diversion • Environmental protection | Licensure; canopy limits; location (distance from schools, etc.); plant tracking; pesticide use; employee age and criminal history; waste management; owner/employee residency requirements. |
| Production/processing | <ul style="list-style-type: none"> • Product standardization • Product quality control • Prevention of diversion • Environmental protection | Flower/trim tracking; concentrates/extracts standards; waste management; THC/CBD restrictions; packaging; employee age and criminal history; owner/employee residency requirements. |
| Point-of-Sale/sales/product marketing | <ul style="list-style-type: none"> • Sales/use limits • Prevention of underage use • Prevention of diversion | Product labeling; warning labeling; age restrictions; product sale limits; inventory control; seller age and employee restrictions; owner/employee residency requirements; outlet types and density restrictions; product pricing; advertising; nonresident sales/use. |
| Consumption/possession | <ul style="list-style-type: none"> • Limitation of youth access • Arrest reduction • Diversion reduction/elimination | Hours of operation; advertising; gifting; home grows; public use; possession of amounts over state limits. |
| Taxes/finance | <ul style="list-style-type: none"> • Limitation of abuse and dependence • Increased revenue • Limitation of illegal markets • Prevention of diversion | Excise taxes; licensure fees; general fund and/or earmarking of marijuana tax proceeds for prevention, treatment, regulatory enforcement; research. |
| Public health/ safety | <ul style="list-style-type: none"> • Limitation of abuse and dependence • Prevention of underage use • Prevention of impaired driving | Use and driving; workplace use; prevention and treatment programs; use/consequences monitoring and evaluation. |
| Governance | <ul style="list-style-type: none"> • Establishment of oversight • Compliance enforcement • Public information on expected and unexpected benefits/costs • Promotion of transparency • Allowance for future adaptation and adjustment | State regulatory oversight; regulatory enforcement; policy outcome monitoring; regulatory flexibility. |

When we look at the Colorado and Washington experiences, although there were measurable increase in use in both states, they were not nearly 58 percent. Past-month marijuana use among individuals 12 and older increased 16 percent from 2011 to 2013 in Colorado (from 10.98 percent to 12.70 percent) and 24 percent in Washington (from 9.88 percent to 12.28 percent) (SAMHSA 2012, 2014).⁸

⁸ Other data suggest that increases in use among youth, the population on which prevention efforts are target and use is prohibited, may be even less. A recent comprehensive study of 1,098,270 adolescents, ages 13-17, from 1991 to 2014 found that, in 21 states with medical marijuana laws, past-30-day marijuana use did not increase after the laws were passed (Hasin et al. 2015). The study's authors mention several other studies that yielded the same results, although the sample sizes were not nearly as robust. Similarly, according to the NSDUH, increases in past-30-day use among the 12-17 population in Colorado and Washington from 2011 to 2013 were negligible at 4 percent and 2 percent, respectively (SAMHSA, 2012 and 2014).



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